

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

BRISTOL VILLAGE, INC., Individually and on
behalf of a class of others similarly situated,

Plaintiff,

v.

LOUISIANA-PACIFIC CORPORATION,

Case 1:12-cv-00263-EAW-LGF

Defendant.

LOUISIANA-PACIFIC CORPORATION,

Third-Party Plaintiff,

v.

CHARLES TRUMP, JR. d/b/a
NORTHERN ROOFING a/k/a
NORTHERN ROOFING & CONSTRUCTION,
and JOHN DOES 1 – 10,

Third-Party Defendants.

**PLAINTIFF BRISTOL VILLAGE, INC'S
NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiff Bristol Village, Inc. ("Plaintiff") respectfully submits the following supplemental authority to its previously filed Memorandum in Opposition to Defendant/Third Party Plaintiff Louisiana-Pacific Corp.'s ("Defendant") Motion for Summary Judgment (Dkt. 97 Nov. 14, 2014). The United States District Court for the Northern District of Ohio denied in part and granted in part a summary judgment motion filed by Defendant in a parallel case, finding that issues of fact existed with respect to that plaintiff's express warranty and "essential purpose"

claims, and it entered summary judgment for Defendant on the plaintiff's unconscionability claim. *See* Exhibit A, *Holbrook v. Louisiana-Pacific Corp.*, No. 12-cv-484, Order (Dkt. 75 Mar. 23, 2015).

In *Holbrook*, the district court held that "evidence would permit the jury to find Louisiana-Pacific breached the warranty by refusing to compensate Holbrook for defective TrimBoard that was compensable under the company's then-applicable installation instructions." Ex. A, Order at 5. Significant factors considered by the district court include Defendant's reliance on incorrect installation instructions when evaluating the claim and Defendant's refusal to compensate the plaintiff for all of the Trimboard he alleged was defective. *Id.* at 5-6. In addition, the district court found that the evidence presented in *Holbrook* "creates a genuine dispute of material fact as to whether Louisiana-Pacific's warranty failed of its essential purpose." *Id.* at 13.

Buying new trim is the least of what Holbrook must spend to enjoy the benefit of his warranty. Simply dumping new TrimBoard in his yard and telling him to take it from there ignores what it foreseeably and necessarily will cost to do so. Under these circumstances a reasonable jury could find that the warranty failed of its essential purpose.

Id. at 12.

Plaintiff respectfully submits that the opinion in *Holbrook* further supports its request that this Court deny Defendant's summary judgment motion.

Dated: March 24, 2015

Respectfully submitted,

/s/ Michael J. Flannery

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CERTIFICATE OF SERVICE

This document was filed electronically on March 24, 2015. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system, and parties may access this filing through the Court's system.

s/ Katherine Van Dyck
Katherine Van Dyck